



## Common Market for Eastern and Southern Africa Comprehensive African Agriculture Development Programme

### Legislation to Support Cross- border Livestock Mobility

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#### **Huge benefits foregone**

Cross-border livestock mobility in the COMESA region is of tremendous importance to national and regional economies and food security, particularly in pastoral areas. In East Africa, for example, the inter-regional livestock trade is estimated to have an annual value in excess of US\$ 65 million. Revenues earned from cross-border trade primarily finance the import of cereals and other essential items (tea, sugar, oil, medicine, clothing) into grain-deficit dry pastoral areas. The value and importance of this back trading is such that when cross-border livestock sales are banned, governments discover that they have to bring in food aid.

Cross-border mobility is also critical for the maintenance of high pastoral livestock productivity. National borders arbitrarily created by the European powers at the Berlin Conference in 1885 split pastoral communities apart, divided ecological zones and cut through trading routes. The border between Kenya and Uganda, for example, demarcated along the Turkana escarpment, severs the wet season lowland plains to the east from the wetter dry season highland grazing areas to the west. This has seriously undermines pastoral productivity and ability to manage drought and thereby contributes to conflict.

Unlike West Africa that has passed specific legislation to protect and enhance regional livestock mobility and trade, many governments in the COMESA region regard cross-border mobility, particularly of pastoralists, to be illegal. Much on-going livestock movement and trade thus remains hidden and unofficial. This contributes to conflict, undermines the profitability and productivity of the pastoral sector and represents huge benefits foregone to national and regional economies.

#### **Linking regional and local livestock mobility**

Lessons from West Africa indicate cross-border mobility needs to be addressed within a comprehensive policy, legal and institutional framework that harmonizes national and regional legislation to secure livestock mobility from the local to the regional level.

At regional level, the ECOWAS decision agreed in Abuja in October 1998 provides a regional framework for cross-border transhumance between fifteen member states.<sup>1</sup> The decision authorizes cross-border transhumance in respect of certain conditions, the chief of which is the granting of an **International Transhumance Certificate (ITC)**. The ITC aims to:

- Allow a control of departing livestock herds.
- Assure the protection of animal health of local herds in the host country.
- Inform in good time the populations of 'welcoming areas' of the arrival of herds from neighbouring countries.

The rights of non-resident mobile herders are protected by the host countries legislation, but they also have to abide by the laws of the host country in relation to forests, wildlife, water points and pastures. Conflict resolution is envisaged via a conciliation commission (*commission de conciliation*) made up of herders, farmers, local government representatives and other concerned parties.

<sup>1</sup> Réglementation de la transhumance entre les états membres de la CEDEAO Décision A/DEC.5/10/98 of 1998 and C/REG.3/01/03 of 2003. Member states : Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo

#### Box 1

##### Legality of cross-border transhumance

*The crossing of land borders for the transhumance of cattle, sheep, goats, camels and donkeys according to conditions defined by this Decision is authorized between all the countries of the Community.*

Article 3, Decision A/DEC.5/10/98 regulating transhumance between the member states of ECOWAS.

There are certain restrictions for pastoralists. In order to gain the ITC, they must provide local administration services with information on their herd, vaccinations, the itinerary they intend to follow and the border posts they will use. In addition, there must be minimum two herders at any one time, and at least one herder per 50 head of livestock.

In practice pastoralists have complained of the administrative "red tape" in acquiring relevant documents, of harassment and illegal fines from border officials and of the fact that livestock corridors are often blocked in the host countries thereby contributing to farmer-herder conflicts. Furthermore the rigidity with which the transhumance dates are fixed without sufficient consultation with pastoral communities or regard to the particular environmental conditions of a particular year have also caused problems.

Bi-lateral agreements between countries on livestock mobility have also been passed. These are essential to tailor the ECOWAS decision to local realities, and they tend to be short documents that set out the modalities for cross-border mobility – see Box 2.

#### Box 2

##### Key specifications common to bi-lateral agreements for cross-border mobility

- Essential documents required to cross the borders are specified – e.g. passport, vaccination and animal health certificates.
- Time periods for mobility are specified – e.g. between November and April, and not exceeding a period of 30 days.
- Entry and exit points and livestock corridors along which animals must travel are specified.
- Conflict resolution conditions are specified.

Bi-lateral institutions to manage and monitor the provisions within the agreements and in accordance with the ECOWAS decision have also been created. For example, in 2003, Burkina Faso and Niger signed an agreement to hold an annual meeting between their livestock ministers and establish a Joint Technical Committee to support the ministers' meetings, provide recommendations for consideration, contribute to

conflict mediation and implement other activities as instructed.<sup>2</sup> Though not perfect, this has contributed to facilitating peaceful livestock movements between their two countries.

Cross-border mobility as an extension of national livestock mobility needs to be addressed within the respective national legislation of contiguous countries if it is to be recognised and secured. Legal provisions need to be harmonised in national legislation in all countries in the following key areas:

- Recognition of livestock mobility within and between countries as a rational and productive form of land use.
- Protection of the rangelands as communal areas under controlled access management systems.
- Protection of pastoral resources from alienation or encroachment, particularly strategic resources (dry season water, dry season grazing, livestock corridors, etc.).
- Provision for flexible tenure arrangements that focus on rights of access and control rather than ownership and which accommodate multiple use and over-lapping rights of access.
- Establishment of conflict management mechanisms focused on mediation, negotiation and consensus
- Decentralization of management decisions to the level of communities with space for traditional institutions and systems to function effectively

Box 3 provides a few examples of key provisions within pastoral laws in Mali, Mauritania and Niger that explicitly address pastoral land use, livestock mobility, conflict resolution, and crop-livestock integration.<sup>3</sup>

#### The way forward

To promote and secure cross-border livestock mobility in the COMESA region an over-arching policy and legal framework needs to be developed at both regional and national level. Such a framework must explicitly address pastoral land use, livestock mobility, conflict resolution, crop-livestock integration and the integration of customary and modern institutions to create a more effective governance framework capable of mediating the interests of all livelihood groups. It is essential that this be designed with the full and informed participation of pastoral communities and other actors including farmers, the private sector, local government authorities and national

<sup>2</sup> Protocole d'accord portant création d'un cadre de concertation entre le Burkina Faso et la République du Niger sur la transhumance transfrontalière (2003).

<sup>3</sup> Loi 2000/044 portant code pastoral en Mauritanie ; Loi n° 004 du 27 février 2001 portant charte pastorale en République du Mali ; and Projet de loi relative au pastoralisme, 2009, Niger. The laws of Mali and Mauritania have been promulgated and have directives (decrees) for their implementation. In Niger, the law has been approved by the government but not passed by Parliament – the latter having been dissolved by the President in May 2009.

### Box 3

#### Innovative legal provisions from West Africa

- *Pastoral mobility is protected under all circumstances and can only be limited temporarily and for reasons of the safety of animals and crops, and this in accordance with the provisions of the law.* Art 10, Pastoral Law, Mauritania
- *In the context of the policy of regional integration, the movement of Malian livestock herds for international transhumance to neighbouring countries is authorised...[...]. Similarly, the entry and movement of herds from neighbouring countries on Mali's territory for the purpose of transhumance is authorised subject to reciprocity and according to bi-lateral and regional agreements ...[.].* Art 23, Pastoral Charter, Mali
- *Subject to provisions within the current law, all forms of exclusive appropriation of pastoral areas under the public domain of the State and local government is prohibited. In particular, no land may be leased if it constrains the mobility of herders and livestock as well as access to pastoral resources.* Art 5, Pastoral Law, Niger
- *Pastoralists can, at their request, benefit from a priority right of pastoral use of natural resources situated in their home area. The priority right of pastoral use does not prevent the implementation of customary rules of management and use of pastoral areas, in particular the third party access to water and the right of grazing...[...].* Art 11, Pastoral Law, Niger

institutions (e.g. line ministries, MPs). Experience from Niger in particular has shown how a participatory and iterative “learning” process over more than three years and involving representatives of the majority of stakeholders from rural communities to line ministries has produced a pastoral law whose provisions are widely considered to support pastoral land rights and livestock mobility.

However, legal protection of cross-border mobility is not in itself adequate. It is a necessary and vital component, but it needs to be followed by a set of complementary activities including:

- **Information, communication outreach and training** are critical to ensure all actors are aware of and understand the laws and their provisions. Pastoralists need to build capacities in legal and political engagement, learn to assert their rights and ensure that government authorities are applying checks and balances as specified by law.
- **Investment in livestock corridors and basic services along their route (water points, resting areas, access to markets, clinics, etc.)** is essential. Developing such routes involves not just financial investments in physical structures (beacons, wells, etc.), but critically investment in consensus building among all actors to ensure the legitimacy and protection of the routes.
- **The development of operational guidelines** (decrees, byelaws, etc.), which set out the practical steps and modalities for the implementation of the substantive law including responsibilities of different actors, sanctions, etc. These guidelines need to be developed with the full collaboration of all actors to ensure their legitimacy, they need to reflect local realities and specificities and they need to be accessible to all actors.

Finally, it is essential to harmonise the wider institutional and development framework, largely focused on growth through the modernization of the agricultural sector, to ensure it complements

and supports cross-border mobility in the COMESA region.

#### Further reading

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#### Further information

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